

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRIAN TODD RICHARDS,

Defendant-Appellant.

UNPUBLISHED

April 15, 2003

No. 238164

Ottawa Circuit Court

LC No. 00-024397-FH

Before: Jansen, P.J., and Kelly and Fort Hood, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction for assault with intent to commit criminal sexual conduct, MCL 750.520g(1), and attempted kidnapping a child under the age of fourteen (child enticement), MCL 750.350. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant asserts that his confession was involuntary and improperly secured. To establish a valid waiver of *Miranda*¹ rights, the state must present evidence sufficient to demonstrate that the accused understood that he did not have to speak, that he had the right to the presence of counsel, and that what he said could be used against him at trial. *People v Cheatham*, 453 Mich 1, 29; 551 NW2d 355 (1996). Although engaging in de novo review of the entire record, this Court will not disturb a trial court's factual findings regarding a knowing and intelligent waiver unless that ruling is clearly erroneous. *Id.* at 30.

Two detectives testified that they informed defendant of his *Miranda* rights three times, defendant never requested a lawyer, and he never asked to stop the interview. Defendant admitted receiving *Miranda* warnings, but claimed that he asked for a lawyer, and asked to stop the interview. The trial court found that defendant was not credible based on lack of consistency, clarity, and coherence. There is no showing that the trial court clearly erred in finding as a matter of fact that defendant did not assert his rights. De novo review of the record supports the conclusion that defendant knowingly and voluntarily waived his rights. *Cheatham, supra*.

Defendant also asserts that there was insufficient evidence to support his attempted kidnapping conviction. In determining whether sufficient evidence has been presented to sustain

¹ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

a conviction, a reviewing court must view the evidence in a light most favorable to the prosecution, and determine whether any rational finder of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, mod 441 Mich 1201 (1992). “The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

MCL 750.350 provides in part:

A person shall not maliciously, forcibly, or fraudulently lead, take, carry away, decoy, or entice away, any child under the age of 14 years, with the intent to detain or conceal the child from the child’s parents or legal guardian, or from the person or persons who have adopted the child, or from any other person having the lawful charge of the child.

The statute requires a showing of specific intent to detain or conceal a child. *People v Kuchar*, 225 Mich App 74, 77; 569 NW2d 920 (1997). The statute does not have an asportation requirement. *Id.* Complainant’s testimony that defendant grabbed her in a headlock and pulled her toward a park was sufficient to show that defendant attempted to forcibly detain her and carry her away.

Affirmed.

/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood